IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.35 of 1999

Reserved on:18.07.2007.

Decided on: July 23, 2007

Krishan Chand ***…..Appellant.***

VERSUS

State of H.P. & Anr. ***…..Respondents.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: **Mr.K.D.Sood, Advocate.**

For the Respondents: **Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G.**

Kuldip Singh, Judge

The petitioner is in appeal against the award dated 14.10.1998 passed by learned Additional District Judge, Mandi in Land Reference case No.40 of 1993.

2. The brief facts of the case are that Government of Himachal Pradesh, Department of Public Works, had acquired land of petitioner for public purpose, namely, construction of Plassi – Triphalghat road comprised in Khewat No.46 min, Khatauni No.51, Khasra No.350/1 measuring 0-01-33 hactare, Khasra No.353/1 measuring 0-00-84 hactare, Khasra No.354/1 measuring 0-00-56 hactare and Khasra No.354/2 measuring 0-01-70 hactare situate in

---

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

revenue estate Badhai, Sub Tehsil Baldwara, District Mandi, H.P. The notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') was issued on 2.12.1985. The Collector made the award on 15.3.1990. He determined the market value of A Class non irrigated land at the rate of Rs.10/- per square metre. The market value of non cultivable land including Kharatar and Gair Mumkin was determined at the rate of Rs.5/- per square metre. The petitioner Krishan Chand was paid Rs.3345/- compensation. In addition, he was paid solatium, additional compensation under Section 23(1-A) of the Act and interest; in all Rs.13,179/-.

3. The petitioner was aggrieved by the award made by Collector. He made a reference under Section 18 of the Act on the grounds that the Collector had not determined the market value of the land rightly. He submitted that compensation was not determined for fruit and non fruit bearing trees which were standing on the acquired land. The possession of the acquired land was taken in the year 1960-62. The State is, therefore, liable to pay interest on the amount of compensation from 1962 onwards. The adjoining holding of the petitioner had been injuriously affected and, therefore, the petitioner is entitled to compensation for that also.

4. The State resisted the petition and submitted that Collector determined the compensation rightly. The other land of the petitioner was not affected by the acquisition. It was denied that possession of the acquired land was taken in the year 1960-62. The claim of the petitioner was denied.

5. The learned Additional District Judge held that Collector had determined the compensation in accordance with the Act. He has observed that Collector had been liberal in determining the market value of the acquired land. The learned Additional District Judge dismissed the land reference petition on 14.10.1998 and, therefore, petitioner is in appeal against the impugned award.

6. I have heard the learned counsel for the parties and gone through the record.

7. The learned counsel for the petitioner / appellant has submitted that the Collector has not determined the market value of the acquired land in accordance with law, nothing has been paid for the fruit and non fruit trees which were standing on the acquired land. The acquisition injuriously affected the adjoining land of the petitioner and the Additional District Judge has paid nothing for said injury. The interest has not been awarded to the petitioner from the date of possession of the acquired land which was taken in the year 1960-62. The learned Advocate General has submitted that the learned Additional District Judge has considered the material on record and has supported the impugned award.

8. The petitioner has examined PW-1 Lekh Ram. He has stated that he had seen the acquired land. Sunder Singh had sold 2 ½ biswas of land to Nirmala Devi in Village Gharkhari for a consideration of Rs.8000/- in the year 1984 and he was a witness to said sale deed and copy thereof is Ext.PA dated 14.10.1984. The distance between acquired land and land sold by Sunder Singh is

about 300-400 metres. This is the only evidence led by the petitioner. The State has tendered in evidence sale deed Ext.D-1 dated 20.1.1985 and sale deed Ext.D-2 dated 29.3.1985 and no other evidence was led. As per sale deed Ext.D-1 Ganga Ram sold land comprising Khasra No.361/1 measuring 0-04-50 hactare in Mohal Badhai to Gian Chand and Brij Lal for a consideration of Rs.1300/-. Rubbal sold land comprised in Khasra No.232 measuring 0-01-00 hactare situate at Mohal Badhai to Sukh Ram and Brij Lal for a consideration of Rs.300/-.

9. The Collector while determining the market value of the acquired land has considered 14 sale transactions with effect from 14.12.1981 to 14.12.1985 and he came to the conclusion that as per those sale transactions the average sale price in the Mohal comes to Rs.0-06 per square metre for Barani Awal and Rs.0-01 per square metre for Kharatar and Gair Mumkin. The Collector, however, while determining the market value in the award dated 15.3.1990 has fixed rate of Barani Awal Rs.10/- per square metre and Kharatar, Gair Mumkin at the rate of Rs.6/- per square metre. This is more than the average sale price of the land in Mohal Badhai in between the period 14.12.1981 to 14.12.1985. The sale deed Ext.PA dated 14.10.1985 is of Mohal Gharkhari whereas the acquired land is situated in Mohal Badhai. It is not the case of the petitioner that during the relevant period no sale transactions took place in Mohal Badhai. The petitioner has not appeared in the witness box in support of his case. In these circumstances, the sale

deed Ext.PA cannot be relied for determining the market value of the acquired land. The Additional District Judge has considered the sale deeds Ext.D-1 and Ext.D-2 and has rightly come to the conclusion that keeping in view the location, shape, size, potentiality of the acquired land and the land covered by sale deeds Ext.D-1 and D-2 those sale deeds cannot be termed as comparable sales. The petitioner has led no evidence to prove sale transactions in Mohal Badhai during the relevant period. In the absence of relevant material on record, the Additional District Judge has rightly upheld the award passed by the Collector.

10. The petitioner has led no evidence regarding the market value of fruit and non fruit trees on the acquired land. The Additional District Judge has noticed the observations of the Collector in the award dated 15.3.1990 that proprietors had cut and removed the non fruit trees from the land under acquisition. There is no other evidence on record that aforesaid observation of Collector is not correct. The petitioner has led no evidence regarding the claim of the petitioner for assessment of market value of fruit and non fruit trees. Similarly, the petitioner has led no evidence to prove alleged damage caused to his adjacent land by the construction of road on the acquired land. The Additional District Judge has appreciated the material on record rightly. The learned counsel for the petitioner / appellant has failed to make out any case for enhancement of compensation.

11. The result of above discussion is that the appeal is dismissed with no order as to costs.

July 23, 2007 *(soni)*

(Kuldip Singh)
Judge.